

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 112, Pages 27 through 36, Sections
2 348.273 and 348.274, by deleting all of said sections from the bill and inserting in lieu thereof the
3 following:

4 "348.273. 1. This section and section 348.274 shall be known and may be cited as the
5 "Missouri Angel Investment Incentive Act".

6 2. As used in this section and section 348.274, the following terms mean:

7 (1) "Cash investment", money or money equivalent contribution;

8 (2) "Department", the department of economic development;

9 (3) "Investor":

10 (a) A natural person who is an accredited investor as defined in 17 CFR 230.501(a)(5) or 17
11 CFR 230.501(a)(6), as in effect on August 28, 2013;

12 (b) A permitted entity investor who is an accredited investor as defined in 17 CFR
13 230.501(a)(8), as in effect on August 28, 2013; or

14 (c) A natural person or permitted entity investor making an investment that is permitted
15 under the Jumpstart Our Business Startups Act, Pub. L. No. 112-106, Sections 301-305, 126 Stat.
16 315-323, as in effect on August 28, 2013.

17 A person who serves as an executive, officer, or employee of the business in which an otherwise
18 qualified cash investment is made is not an investor and such person shall not qualify for the issuance
19 of tax credits for such investment;

20 (4) "Owner", any natural person who is, directly or indirectly, a partner, stockholder, or
21 member in a permitted entity investor;

22 (5) "Permitted entity investor", any charitable organization which is exempt from federal
23 income tax and whose Missouri unrelated business taxable income, if any, would be subject to the
24 state income tax imposed under chapter 143, general partnership, limited partnership, small
25 corporation described in section 143.471, revocable living trust, or limited liability company that has
26 elected to be taxed as a partnership under the United States internal revenue code, and that was
27 established and is operated for the purpose of making investments in other entities;

28 (6) "Qualified knowledge-based company", a company based on the use of ideas and
29 information to provide innovative technologies, products, and services;

30 (7) "Qualified Missouri business", the Missouri businesses that are approved and certified as
31 qualified knowledge-based companies by the regional SBTDC that meet at least one of the following
32 criteria:

33 (a) Any business owned by an individual;

34 (b) Any partnership, association, or corporation domiciled in Missouri; or

35 (c) Any corporation, even if a wholly owned subsidiary of a foreign corporation, that does
36 business primarily in Missouri or does substantially all of such business's production in Missouri;

37 (8) "Qualified securities", a cash investment through any one or more forms of financial

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1 assistance as provided in this subdivision and that have been approved in form and substance by the
 2 department. Forms of such financial assistance include:

3 (a) Any form of equity, such as:

4 a. A general or limited partnership interest;

5 b. Common stock;

6 c. Preferred stock, with or without voting rights, without regard to seniority position, and
 7 whether or not convertible into common stock; or

8 d. Any form of subordinate or convertible debt, or both, with warrants or other means of
 9 equity conversion attached; or

10 (b) A debt instrument, such as a note or debenture that is secured or unsecured, subordinated
 11 to the general creditors of the debtor and requires no payments of principal, other than principal
 12 payments required to be made out of any future profits of the debtor, for at least a seven-year period
 13 after commencement of such debt instrument's term;

14 (9) "SBTDC", the Missouri small business and technology development center; and

15 (10) "Tax credit", a credit against the tax otherwise due under chapter 143, excluding
 16 withholding tax imposed by sections 143.191 to 143.265.

17 3. The Missouri angel investment incentive act shall be administered by the regional
 18 SBTDCs and the department, with the primary goal of encouraging individuals to provide
 19 seed-capital financing for emerging Missouri businesses engaged in the development,
 20 implementation, and commercialization of innovative technologies, products, and services. Each
 21 regional SBTDC shall establish a regional committee consisting of no fewer than three but no more
 22 than five persons for the purpose of reviewing applications from businesses requesting designation as
 23 a qualified Missouri business and allocating the amount of available tax credits among the qualified
 24 Missouri businesses. The department shall establish its own rules of procedure, including the form
 25 and substance of applications to be used by each regional SBTDC and the criteria to be considered
 26 by each regional SBTDC when evaluating a qualified Missouri business, such applications and
 27 criteria to be not less than the minimum requirements set forth in subsection 5 of this section. The
 28 department shall issue tax credits to qualified investors that make cash investments in qualified
 29 Missouri businesses that have been allocated available tax credits by a regional SBTDC.

30 4. (1) A tax credit shall be allowed for an investor's cash investment in the qualified
 31 securities of a qualified Missouri business. The credit shall be in a total amount equal to fifty percent
 32 of such investor's cash investment in any qualified Missouri business, subject to the limitations set
 33 forth in this subsection. This tax credit may be used in its entirety in the taxable year in which the
 34 cash investment is made except that no tax credit shall be allowed in a year prior to the year
 35 beginning January 1, 2014. If the amount by which that portion of the credit allowed by this section
 36 exceeds the investor's liability in any one taxable year, the remaining portion of the credit may be
 37 carried forward five years or until the total amount of the credit is used, whichever occurs first. If
 38 the investor is a permitted entity investor, the credit provided by this section shall be claimed by the
 39 owners of the permitted entity investor in proportion to their equity investment in the permitted
 40 entity investor.

41 (2) A cash investment in a qualified security shall be deemed to have been made on the date
 42 of acquisition of the qualified security, as such date is determined in accordance with the provisions
 43 of the Internal Revenue Code of 1986, as amended.

44 (3) The director of the department of revenue shall not allow tax credits of more than fifty
 45 thousand dollars for a single qualified Missouri business or a total of two hundred fifty thousand
 46 dollars in tax credits for a single year per investor who is a natural person or owner of a permitted
 47 entity investor. No tax credits authorized by this section and section 348.274 shall be allowed for
 48 any cash investments in qualified securities for any year beginning after December 31, 2019. The

1 total amount of tax credits allocated under this section shall not exceed six million dollars per year.

2 (4) At the beginning of each calendar year, the department shall equally designate the tax
 3 credits available during that year to each regional SBTDC. At the beginning of each calendar
 4 quarter, the department shall allocate to each regional SBTDC one-fourth of the total tax credits
 5 designated to such regional SBTDC for the calendar year such that the regional SBTDC can allocate
 6 tax credits among the qualified Missouri businesses. The department shall then issue tax credits to
 7 qualified investors for cash investments in such qualified Missouri businesses during that calendar
 8 quarter.

9 (5) At the end of each calendar quarter, each regional SBTDC shall report to the department
 10 any unallocated tax credits for the preceding quarter. Such report shall meet the requirements set
 11 forth in section 348.274. The department shall aggregate all such tax credits and reallocate them
 12 equally among the regional SBTDCs as soon as possible during the next consecutive calendar
 13 quarter. Each regional SBTDC shall receive such reallocation in addition to the new allocation of
 14 designated tax credits for such quarter.

15 (6) During the fourth calendar quarter, a regional SBTDC in need of additional tax credits
 16 for transactions closing in the fourth calendar quarter may request that another regional SBTDC with
 17 unallocated tax credits permit such unallocated tax credits to be allocated by the requesting SBTDC.
 18 No regional SBTDC shall be required to grant such request. When a granting SBTDC transfers the
 19 allocation of the unallocated tax credits to a requesting SBTDC under this subdivision, the granting
 20 SBTDC shall provide to the requesting SBTDC a written confirmation authorizing such transfer, the
 21 granting SBTDC shall include a copy of such written confirmation in its reports provided under
 22 section 348.274, and the requesting SBTDC shall include a copy of such written confirmation in its
 23 reports provided under section 348.274.

24 5. (1) Before an investor may be entitled to receive tax credits under this section and section
 25 348.274, such investor shall have made a cash investment in a qualified security of a qualified
 26 Missouri business. The business shall have been approved by a regional SBTDC as a qualified
 27 Missouri business before the date on which the cash investment was made. To be designated as a
 28 qualified Missouri business, a business shall make application to a regional SBTDC in accordance
 29 with the provisions of this section.

30 (2) The application by a business to a regional SBTDC shall be in the form and substance as
 31 required by the department, but shall include at least the following:

32 (a) The name of the business and certified copies of the organizational documents of the
 33 business;

34 (b) A business plan, including a description of the business and the management, product,
 35 market, and financial plan of the business;

36 (c) A statement of the potential economic impact of the enterprise, including the number,
 37 location, and types of jobs expected to be created;

38 (d) A description of the qualified securities to be issued, the consideration to be paid for the
 39 qualified securities, and the amount of any tax credits requested;

40 (e) A statement of the amount, timing, and projected use of the proceeds to be raised from
 41 the proposed sale of qualified securities; and

42 (f) Such other information as the regional SBTDC or the department may reasonably
 43 request.

44 (3) The designation of a business as a qualified Missouri business shall be made by the
 45 regional SBTDC, and such designation shall be renewed annually. A business shall be so designated
 46 if the regional SBTDC determines, based upon the application submitted by the business and any
 47 additional investigation the regional SBTDC shall make, that such business meets the criteria
 48 established by the department. Such criteria shall include at least the following:

1 (a) The business shall not have had annual gross revenues of more than five million dollars
 2 in the most recent tax year of the business;

3 (b) Businesses that are not bioscience businesses shall have been in operation for less than
 4 five years, and bioscience businesses shall have been in operation for less than ten years;

5 (c) The ability of investors in the business to receive tax credits for cash investments in
 6 qualified securities of the business is beneficial, because funding otherwise available for the business
 7 is not available on commercially reasonable terms;

8 (d) The business shall not have ownership interests including, but not limited to, common or
 9 preferred shares of stock, that can be traded via a public stock exchange before the date that a
 10 qualifying investment is made;

11 (e) The business shall not be engaged primarily in any one or more of the following
 12 enterprises:

13 a. The business of banking, savings and loan or lending institutions, credit or finance, or
 14 financial brokerage or investments;

15 b. The provision of professional services, such as legal, accounting, or engineering services;

16 c. Governmental, charitable, religious, or trade organizations;

17 d. The ownership, development brokerage, sales, or leasing of real estate;

18 e. Insurance;

19 f. Construction or construction management or contracting;

20 g. Business consulting or brokerage;

21 h. Any business engaged primarily as a passive business, having irregular or noncontinuous
 22 operations, or deriving substantially all of the income of the business from passive investments that
 23 generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of
 24 which is to immunize an investor from risk of loss;

25 i. Any activity that is in violation of the law;

26 j. Any business raising money primarily to purchase real estate, land, or fixtures; and

27 k. Any gambling related business;

28 (f) The business has a reasonable chance of success;

29 (g) The business has the reasonable potential to create measurable employment within the
 30 region, this state, or both;

31 (h) The business has an innovative and proprietary technology, product, or service;

32 (i) The existing owners of the business and other founders have made or are committed to
 33 make a substantial financial and time commitment to the business;

34 (j) The securities to be issued and purchased are qualified securities;

35 (k) The business has the reasonable potential to address the needs and opportunities specific
 36 to the region or this state, or both;

37 (l) The business has made binding commitments to the regional SBTDC for adequate
 38 reporting of financial data, including a requirement for an annual report, or, if required by the
 39 regional SBTDC, an annual audit of the financial and operational records of the business, the right of
 40 access to the financial records of the business, and the right of the regional SBTDC to record and
 41 publish normal and customary data and information related to the issuance of tax credits that are not
 42 otherwise determined to be trade or business secrets;

43 (m) The business shall satisfy all other requirements of this section and section 348.274; and

44 (n) This section and all referenced sections herein are subject to the provisions of section
 45 196.1127.

46 (4) Notwithstanding the requirements of subdivision (3) of this subsection, a business may
 47 be considered as a qualified Missouri business under the provisions of this section and section
 48 348.274 if such business falls within a standard industrial classification code established by the

1 department.

2 (5) A qualified Missouri business shall have the burden of proof to demonstrate to the
3 regional SBTDC the qualifications of the business under this section.

4 6. Any rule or portion of a rule, as that term is defined in section 536.010 that is created
5 under the authority delegated in this section and section 348.274 shall become effective only if it
6 complies with and is subject to all of the provisions of chapter 536, and, if applicable, section
7 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
8 general assembly pursuant to chapter 536, to review, to delay the effective date, or to disapprove and
9 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any
10 rule proposed or adopted after August 28, 2013, shall be invalid and void.

11 348.274. 1. (1) Each regional SBTDC is authorized to allocate tax credits to qualified
12 Missouri businesses. The department is authorized to issue tax credits to qualified investors in such
13 qualified Missouri businesses. Such tax credits shall be allocated to those qualified Missouri
14 businesses which, as determined by the regional SBTDC, are most likely to provide the greatest
15 economic benefit to the region, the state, or both. The regional SBTDC may allocate, and the
16 department may issue, whole or partial tax credits based on the regional SBTDC's assessment of the
17 qualified Missouri businesses. The regional SBTDC may consider numerous factors in such
18 assessment, including but not limited to, the quality and experience of the management team, the size
19 of the estimated market opportunity, the risk from current or future competition, the ability to defend
20 intellectual property, the quality and utility of the business model, and the quality and reasonableness
21 of financial projections for the business.

22 (2) Each qualified Missouri business for which a regional SBTDC has allocated tax credits
23 such that the department can issue tax credits to the qualified investors of such qualified Missouri
24 business shall submit to the regional SBTDC a report before such tax credits are issued. The
25 regional SBTDC shall provide copies of this report to the department. Such report shall include the
26 following:

27 (a) The name, address, and taxpayer identification number of each investor who has made
28 cash investment in the qualified securities of the qualified Missouri business;

29 (b) Proof of such investment, including copies of the securities purchase agreements and
30 cancelled checks or wire transfer receipts; and

31 (c) Any additional information as the regional SBTDC may reasonably require under this
32 section and section 348.273.

33 2. (1) The state of Missouri shall not be held liable for any damages to any investor that
34 makes an investment in any qualified security of a qualified Missouri business, any business that
35 applies to be designated as a qualified Missouri business and is turned down, or any investor that
36 makes an investment in a business that applies to be designated as a qualified Missouri business and
37 is turned down.

38 (2) Each qualified Missouri business shall have the obligation to notify the regional SBTDC
39 that allocated tax credits to the qualified Missouri business and the department in a timely manner of
40 any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit
41 for cash investment in a qualified security.

42 (3) The department shall provide the information specified in subdivision (3) of subsection 4
43 of this section to the department of revenue on an annual basis. The department shall conduct an
44 annual review of the activities undertaken under this section and section 348.273 to ensure that tax
45 credits issued under this section and section 348.273 are issued in compliance with the provisions of
46 this section and section 348.273 or rules and regulations promulgated by each regional SBTDC or
47 the department with respect to this section and section 348.273.

48 (4) If the department determines that a business is not in substantial compliance with the

requirements of this section and section 348.273 to maintain its designation, the department, by written notice, shall inform the business that such business will lose its designation as a qualified Missouri business one hundred twenty days from the date of mailing of the notice unless such business corrects the deficiencies and is once again in compliance with the requirements for designation.

(5) At the end of the one hundred twenty-day period, if the qualified Missouri business is still not in substantial compliance, the department shall send a notice of loss of designation to the business, each regional SBTDC, the director of the department of revenue and to all known investors in the business.

(6) A business shall lose its designation as a qualified Missouri business under this section and section 348.273 by moving its operations outside Missouri within ten years after receiving financial assistance under this section and section 348.273.

(7) In the event that a business loses its designation as a qualified Missouri business, such business shall be precluded from being issued any additional tax credits with respect to the business, shall be precluded from being approved as a qualified Missouri business and shall repay any financial assistance to the regional SBTDC, in an amount to be determined by the regional SBTDC. Each qualified Missouri business that loses its designation as a qualified Missouri business shall enter into a repayment agreement with the regional SBTDC specifying the terms of such repayment obligation.

(8) Investors in a qualified Missouri business shall be entitled to keep all of the tax credits properly issued to such investors under this section and section 348.273.

(9) The portions of documents and other materials submitted to any regional SBTDC or the department that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the regional SBTDC and the department, as applicable. For the purposes of this section and section 348.273, "trade secrets" means any customer lists, formula, compound, production data, or compilation of information that will allow individuals within a commercial concern using such information the means to fabricate, produce, or compound an article of trade or perform any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.

(10) Each regional SBTDC and the department may prepare and adopt procedures concerning the performance of the duties placed upon each respective entity by this section and section 348.273.

3. Any qualified investor who makes a cash investment in a qualified security of a qualified Missouri business may transfer the tax credits such qualified investor may receive under subsection 4 of section 348.273 to any natural person. Such transferee may claim the tax credit against the transferee's Missouri income tax liability as provided in subdivision (1) of subsection 4 of section 348.273, subject to all restrictions and limitations set forth in this section and section 348.273. Only the full credit for any one investment shall be transferred and this interest shall only be transferred one time. Documentation of any tax credit transfer under this section shall be provided by the qualified investor in the manner required by the department.

4. (1) Each qualified Missouri business for which tax credits have been issued under this section and section 348.273 shall report to the applicable regional SBTDC on an annual basis, on or before February first. The regional SBTDC shall provide copies of the reports to the department. Such reports shall include the following:

(a) The name, address, and taxpayer identification number of each investor who has made cash investment in the qualified securities of the qualified Missouri business and has received tax credits for this investment during the preceding year;

(b) The amounts of these cash investments by each investor and a description of the qualified

1 securities issued in consideration of such cash investments; and

2 (c) Any additional information as the regional SBTDC or the department may reasonably
3 require under this section and section 348.273.

4 (2) Each regional SBTDC shall report quarterly to the department on the allocation of the tax
5 credits in the preceding calendar quarter. Such reports shall include:

6 (a) The amount of applications the regional SBTDC received;

7 (b) The number and ratio of successful applications to unsuccessful applications;

8 (c) The amount of tax credits allocated but not issued in the previous quarter, including what
9 percentage was allocated to individuals and what percentage was allocated to investment firms;

10 (d) The amount of unallocated tax credits; and

11 (e) Such other information as reasonably agreed upon by each regional SBTDC and the
12 department.

13 (3) The department shall also report annually to the governor, the president pro tempore of
14 the senate, and the speaker of the house of representatives, on or before April first, on the allocation
15 and issuance of the tax credits. Such reports shall include:

16 (a) The amount of tax credits issued in the previous fiscal year, including what percentage
17 was issued to individuals and what percentage was issued to investment firms;

18 (b) The types of businesses that benefited from the tax credits;

19 (c) The amount of allocated but unissued tax credits and the information about the unissued
20 tax credits set forth in subdivision (2) of this subsection;

21 (d) Any aggregate job creation or capital investment in the region that resulted from the use
22 of the tax credits for a period of five years beginning from the date on which the tax credits were
23 awarded;

24 (e) The manner in which the purpose of this section and section 348.273 has been carried out
25 with regard to the region;

26 (f) The total cash investments made for the purchase of qualified securities of qualified
27 Missouri businesses within the region during the preceding year and cumulatively since the effective
28 date of this section and section 348.273;

29 (g) An estimate of jobs created and jobs preserved by cash investments made in qualified
30 Missouri businesses within the region;

31 (h) An estimate of the multiplier effect on the economy of the region of the cash investments
32 made under this section and section 348.273;

33 (i) Information regarding what businesses derived benefit from the tax credits remained in
34 the region, what businesses ceased business, what businesses were purchased, and what businesses
35 may have moved out-of-region or out-of-state and why.

36 (4) Any violation of the reporting requirements of this subsection by a qualified Missouri
37 business may be grounds for the loss of designation of such qualified Missouri business, and such
38 business that loses its designation as a qualified Missouri business shall be subject to the restrictions
39 upon loss of designation set forth in subsection 2 of this section.

40 5. Notwithstanding sections 23.250 to 23.298 of the Missouri sunset act, sections 348.273
41 and 348.274 shall expire on December 31, 2019."; and

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43
44 Further amend said bill by amending the title, enacting clause, and intersectional references
45 accordingly.